



# CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance & Litigation



Biweekly Report - Period Ending October 14, 1995

## PRC, Inc. v. DOC—Denied

On September 26, 1995, in a lengthy opinion, the GSBGA denied PRC's appeal of a PTO Contracting Officer's decision that PTO could cancel certain Lease to Ownership Plans (LTOPs) for computer equipment used in the Automated Patent System (APS) prior to the end of their five-year terms. This decision was based upon a hearing before the Board held in July, 1994. Under its prime contract with PTO, PRC is responsible for procurement of APS hardware. The usual vehicle for the procurements are five-year LTOPs which generally provide that they are to be funded for each fiscal year at the beginning of the year; this language is similar to the option language used in Government contracts. After PTO decided not to fund two LTOPs for their entire five-year terms, PRC asserted claims on behalf of the lessors asserting that the LTOPs were in the nature of outright purchase agreements and not year-to-year leases, so that PTO was obligated to purchase the equipment and had no cancellation rights. The GSBGA agreed with PTO's interpretation that PTO could choose to not fund any years of the leases without liability. GSA had an interest in this litigation because LTOPs

are commonly used by the Government, as they provide for flexibility to cancel the arrangement prior to the end of the lease term. Fred Kopatich and Lisa Obayashi.

## Garza v. DOC—GSBGA 13332-COM

CLD filed motions for greater specificity, dismissal of one cause of action for lack of jurisdiction, and summary judgment as to \$34,000 of the appealed amounts based on claims submitted after a general release of claims was filed by the contractor. In a telephone conference with the GSBGA to discuss the Government's previously filed opposition to the contractor's request for accelerated procedures, the judge ordered that a new complaint be filed to eliminate confusion over the extent and amount of delay claimed by the contractor. A January hearing was tentatively scheduled. Jeff Hughes & Cecilia Jones have the case.

## NanTom Services, Inc. v. DOC—GAO No. B-270046&47

We received a GAO bid protest on a MASC weather services procurement. The basis of the protest is the improper cancellation of a solicitation. Lisa Obayashi will be asking that GAO dismiss the protest as it is believed to be untimely.

## Wind Profiler--Antenna Procurement

Fred Kopatich raveled to Boulder to meet with NDBC and NIST personnel to discuss procurement and to attend debriefing of Radian Corp.

## Business Process Re-engineering

The BPR team, with Lisa Obayashi, presented its "concept of operations," a precursor to the "To Be" model to Dr. Steven Kelman of OFPP and members of the CAMS Steering Committee. The team also requested that Commerce be granted a pilot project which encompasses certain FAR waivers.

## Loral Meeting

Roxie Jones and Terry Lee joined SAO in an introductory meeting with Jules Frohmann, the President of Loral, Defense Systems-East; Loral is the new parent company of Unisys Corp. Loral proposed to withdraw the Unisys appeal if NOAA and the OIG agree to cease all investigations and pay Unisys its actual costs to purchase the parts under dispute. The parts were valued at \$37.1M. Neither SAO nor the IG are entertaining Loral's proposed terms. Loral was advised that its proposal mirrors a previously rejected offer, that the heart of the lawsuit concerns the reasonableness of the prices Unisys paid.

### Actions Completed/Received during Period

	From 10/01/95	To 10/14/95
	Received	Completed
NIST	4	4
NOAA	3	2
NTIA	1	1
O/S	1	1
PTO	2	2
Total	11	10

### Contract Law Division—Client Workload Period Ending 10/14/95

